

**FRANK JURORS
NOT
SWAYED BY
HOSTILE
CROWD, SAYS
STATE**

Brief, Answering
Application

for Habeas Corpus,
Makes

Vigorous Defense
Against

Charge of
Demonstrations

CASE SET FOR
HEARING

IN WASHINGTON
TUESDAY

Holds if Absence From
Court

Was Erroneous It Isn't Suf- ficient Grounds for Dis- charge of Prisoner

The State's Brief, answering the Application for Habeas Corpus of Leo M. Frank, set for a hearing before the Supreme Court of the United States next Tuesday, has been completed, and besides answers to the technical points made by Frank, the Brief contains a vigorous Defense against the charge that hostile demonstrations by the Court Room crowds swayed the Court Room crowds swayed the Jury.

The brief prepared by Solicitor General Hugh M. Dorsey and Attorney General Warren Grice says:

"The Supreme Court of Georgia is second to no State in according trials free from hostile demonstration and has gone as far, we venture to assert, as any State in the Union in setting aside verdicts where the same were influenced by hostile demonstrations on the part of Spectators."

The Brief cites sixteen Cases, where new trials were granted because of demonstrations, and then continues:

"In Georgia, it has frequently been held that where a party does not have a fair and impartial trial, in the manner contemplated by law, which is guaranteed to him by the State

Constitution, as well as the Constitution of the United States, no matter how strongly the evidence shows his guilt, it must for this reason be set aside and a new trial granted.” (Four Citations.)

“But this is far from holding that whenever an accused alleges those things in a motion for new trial, the Court should grant a new trial. Under our practice, a movant can allege as reason why he contends a new trial should be granted him, whatever facts he pleases; but the State is permitted by Affidavit to make a counter showing, and then the Court that passes on his motion becomes, as to such disputed acts, a trier; and this was what was done in Frank’s Case.” Reference is then made to the opinion of Mr. Justice Atkinson.

HEARING THIS WEEK.

While the Attorneys are not certain that the Frank Case will be heard Tuesday, as a number of other Cases are on the Supreme Court docket for that day, they believe the Case will be reached this week. Attorney General Grice leaves for Washington this afternoon, while Solicitor Dorsey, who went to Valdosta last night for a brief visit, expects to reach Washington Monday night. Attorneys Henry Peeples, Leonard Haas, and probably Harry A. Alexander, representing Frank, will leave on Monday. Attorney Louis Marshall, of New York, will join them in Washington.

The State’s Brief, as prepared by the Solicitor and the Attorney General, covers 81 printed-pages, and answers point by point the contentions of Frank’s Attorneys.

A summary of the Brief is contained in its numerous Sub Heads, and these show the points upon which the State depends.

The State contends that the Defense has not submitted to the United States Courts important parts of the Record, and in this connection the brief says:

“Appellant (Frank) is asking this Court to grant him a Writ of Habeas Corpus, which will virtually overturn his conviction in the State Court, without submitting to the United States Courts

important portions of the Record on which the conviction is based. No Brief of evidence is attached to the Application.”

The Brief contends that every question presented by the Application for Habeas Corpus has already been presented by Frank to the State Court and its decision invoked and its Judgment rendered adverse to him. “The Principles of res judicata applies” says the brief, “and for that reason alone, the questions cannot be re-opened.”

QUESTION MOVE.

The brief contends that in this Case, oral evidence would be required to substantiate Frank’s claim of a lack of Jurisdiction, and where oral evidence is required, Habeas Corpus will not discharge the prisoner.

The State’s Attorneys say that Frank is attempting to make a Habeas Corpus perform the functions of a Writ of Error.

Discussing “due process of law”, the Brief says: “The incorporation of the due process clause in the fourteenth amendment does not result in an overturning of well settled principles and established usages prevailing in States, nor to deprive the State of Power to establish other Systems of law and procedure. Nor does the same Amendment, require the presence of a Defendant in the Court at the reception of a verdict.”

“Frank cannot repudiate the Acts of his Counsel, and waivers such as were made in the Case are binding on the Prisoner,” says the Brief.

In the point revolving about Frank’s absence from the Court Room at the rendition of the verdict, the State contends that he is now trying to do by “indirection what it has been held, Frank could not do directly.”

The Supreme Court of Georgia, the Brief asserts, had jurisdiction to determine whether Frank’s Counsel could waive his presence, and if the Supreme Court of the United States should

think that ruling an error, a Habeas Corpus Writ would not be the proper procedure to correct it.

Finally, the Brief says: "The action of the Court in permitting Frank's Counsel to waive his presence, if erroneous, was a mere irregularity in the matter of procedure, and certainly Habeas Corpus, cannot avail to discharge the prisoner."
